

Message Text

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PAGE 01 EC BRU 05394 01 OF 02 261806Z
ACTION EUR-12

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UNCLAS SECTION 1 OF 2 EC BRUSSELS 5394

PASS AGRICULTURE ELECTRONICALLY

E.O. 11652: N/A
TAGS: EAGR, EEC
SUBJECT: ECJ RULES UK MUST ABOLISH PIG SUBSIDY

REF: (A) EC BRUSSELS 649, (B) LONDON 1128, (C) EC BRUSSELS 841,
(D) EC BRUSSELS 1529

1. SUMMARY. THIS MESSAGE GIVES BACKGROUND INFORMATION AND COMMENTS ON A RECENT EUROPEAN COURT OF JUSTICE'S INTERIM RULING ON THE UK PORK SUBSIDY. THE BRITISH HAVE SAID THEY WOULD COMPLY. END SUMMARY
2. ON MAY 21, THE EUROPEAN COURT OF JUSTICE ORDERED THE UK TO PUT AN END FORTHWITH TO ITS NATONAL PORK SUBSIDY PENDING A FINAL COURT RULING ON ITS CONSISTENCY WITH THE TREATY OF ROME.
3. BACKGROUND: LAST JANUARY 20, HMG ANNOUNCED IT WOULD GRANT A SUBISDY OF 5.5 PENCE/KILO ON PIGS BECAUSE UK PRODUCERS WERE UNCLASSIFIED

UNCLASSIFIED

PAGE 02 EC BRU 05394 01 OF 02 261806Z

UNDERGOING SERIOUS FINANCIAL DIFFICULTIES (REFTELS). THESE DIFFICULTIES WERE BEING FURTHER AGGRAVATED BY THE EC'S MONETARY COMPENSATORY AMOUNT (MCA) SYSTEM, WHICH PROVIDES HIGH SUBSIDIES ON UK IMPORTS. IN THE UK VIEW, THE METHOD OF CALCULATING MCA'S ON PORK WAS INAPPROPRIATE AND SHOULD BE DETERMINED ON THE BASIS OF GRAIN PRICES.

4. ON JANUARY 26, HMG WAS INFORMED BY THE EC COMMISSION THAT IT HAD DECIDED TO OPEN ARTICLE 93 PROCEEDINGS AGAINST THE UK REGARDING ITS ANNOUNCED PROPOSAL FOR A NATIONAL PORK SUBSIDY. THE UK CARRIED OUT ITS PLAN TO INTRODUCE THE PORK SUBSIDY ON JANUARY 31.

5. ON FEBRUARY 17, THE COMMISSION DECIDED TO REJECT ALL THE ARGUMENTS LONDON HAD USED IN DEFENDING THE AID AND REQUESTED ITS SUSPENSION. THE UK MAINTAINED THE SUBSIDY. THE COMMISSION THEN TOOK THE ISSUE TO THE EUROPEAN COURT OF JUSTICE.

6. ACCORDING TO SOME COMMISSION AND UK PERMDEL SOURCES, COMMISSIONER GUNDELACH HAD AN UNDERSTANDING WITH UK MINISTER SILKIN THAT THE SUBSIDY WOULD BE REMOVED AT THE CONCLUSION OF THE 1977/78 FARM PRICE NEGOTIATIONS. THIS VIEW IS HARD TO SUSTAIN SEEING THAT THERE WAS NOTHING IN THE PRICE PACKAGE-- AND THE UK NEVER PUSHED FOR ANYTHING--THAT WOULD ALLEVIATE THE EC PORK PROBLEM NOR AMEND THE MCA ON PORK. OTHER SOURCES SAY THAT IT WAS INTENDED TO HAVE THE LEGAL PROCEEDINGS ROLL ON A SERENE PACE AND THAT THE UK WOULD ABOLISH THE SUBSIDY IMMEDIATELY BEFORE THE FINAL COURT RULING.

7. WHAT BROUGHT THE MATTER TO A HEAD WAS THE PRECIPITIOUS MOVE OF HMG AROUND 2 WEEKS AGO TO FILE A COUNTER-COMPLAINT BEFORE THE EUROPEAN COURT OF JUSTICE CHALLENGING THE LEGAL BASIS OF THE COMMISSION'S DECISION OF FEB 17 TO VETO THE UK SUBSIDY. THIS CASE WOULD HAVE STRETCHED OUT THE LEGAL PROCEEDINGS FURTHER AND WAS CERTAINLY NOT AS THE COMMISSION SAW IT WITHIN THE AGREED RULE OF THE GAME. IT RESPONDED QUICKLY BY ASKING THE COURT TO ADOPT AN UNCLASSIFIED

UNCLASSIFIED

PAGE 03 EC BRU 05394 01 OF 02 261806Z

INTERIM MEASURE REQUIRING THE UK TO CEASE DISREGARDING THE COMMISSION'S REQUEST TO SUSPEND THE SUBSIDY PENDING THE FINAL COURT RULING.

8. IT IS DIFFICULT TO EXPLAIN WHY THE UK "JUMPED THE GUN" ON THIS ISSUE. MINISTER SILKIN IS CONSIDERED BY MANY BRUSSELS OBSERVERS AN INVETERATE AND UNREMOVSEFUL EC-BASHER. SOME CLAIM THAT HE MAY HAVE UNDERESTIMATED GUNDELACH'S REACTION. ONE RATHER NEFARIOUS THEORY HAS IT THAT HE EXPECTED THE COMMISSION'S COUNTER-ATTACK AND, BEING A LAWYER, THE COURT'S INTERIM RULING AS WELL AND WANTED TO PROVOKE MORE ANTI-EC SENTIMENT IN BRITAIN. A NATIONAL FARMERS UNION SOURCE'S PERSONAL SPECULATION IS THAT SILKIN RECEIVED MARCHING ORDERS TO QUASH THE SUBSIDY WHICH WAS COSTING THE UK TREASURY AROUND 1 MILLION POUNDS A WEEK. ABOLISHING THE SUBSIDY UNDER THE GUISE OF COMPLYING WITH A COURT ORDER WAS THE MOST POLITICALLY EXPEDIENT WAY TO GO ABOUT IT.

9. THE COURT RULING. THE EUROPEAN COURT OF JUSTICE RULED THAT

"THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND SHALL FORTHWITH CEASE TO APPLY THE AID MEASURE (TEMPORARY AID TO PIG PRODUCERS) WHICH IT HAS BEEN OPERATING SINCE JANUARY 31, 1977." THE COURT ORDER IS TAKEN AS AN INTERIM MEASURE WITIN ARTICLE 186 OF THE ROME TREATY. RELEVANT PORTIONS OF THE COURT RULING FOLLOW:

QUOTE. ARTICLES 92 AND 93 LAY DOWN MACHINERY FOR THE REVIEW OF THE COMPATIBILITY OF STATE AIDS WITH THE COMMON MARKET IN SUCH A WAY THAT ANY ANTIONAL MEASURE INSTITUTING OR ALTERING ANY SUCH AID SHALL BE INVESTIGATED BY THE COMMISSION AND THAT NO SUCH MEASURE MAY BE PUT INTO EFFECT UNTIL THE COMMISSION HAS ANNOUNCED ITS DECISION.

IT IS THEREFORE NECESSARY TO FIND, WITHOUT PREJUDGING THE QUESTION WHETHER THE COMMISSION'S DECISION OF FEBRUARY 17 IS WELL FOUNDED, THAT, BY BRINGING THE DISPUTED AID MEASURE INTO FORCE FROM UNCLASSIFIED

UNCLASSIFIED

PAGE 04 EC BRU 05394 01 OF 02 261806Z

JANUARY 31, 1977, THE UNITED KINGDOM HAS ACTED IN CONTRAVENTION OF THIS SYSTEM, WHICH IS ESSENTIAL TO PROTECT THE PROPER FUNCTIONING OF THE COMMON MARKET.

EVEN IF THE MEMBER STATE IN QUESTION TOOK THE VIEW THAT THE AID MEASURE WAS COMPATIBLE WITH THE COMMON MARKET, AND THAT THE CONTRARY DECISION OF THE COMMISSON WAS VITIATED BY INFRINGEMENT OF THE RULES OF THE TREATY, THE FACT COULD NOT ENTILE IT TO DEFY THE CLEAR PROVISIONS OF ARTICLE 93 AND TO ACT AS IF THAT DECISION WERE NON-EXISTENT IN LAW.

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PAGE 01 EC BRU 05394 02 OF 02 261811Z
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FM USMISSION EC BRUSSELS

TO SECSTATE WASHDC 3906
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UNCLAS SECTION 2 OF 2 EC BRUSSELS 5394

PASS AGRICULTURE ELECTRONICALLY

INDEED, IT IS IN ORDER TO PREVENT MEMBER STATES FROM ACTING AS JUDGES IN THEIR OWN CAUSE THAT THE TREATY PROVIDES THEM, IN ARTICLE 173 AND THE FOLLOWING ARTICLES, WITH THE OPPORTUNITY TO REFER TO THE COURT ANY INFRINGEMENT OF THE LAW ON THE PART OF THE INSTITUTIONS, SO THAT A DECISION OF THE COMMISSION REMAINS "BINDING IN ITS ENTIRETY" UPON THE STATE TO WHICH IT IS ADDRESSED-- AS LAID DOWN BY THE FOURTH PARAGRAPH OF ARTICLE 189-- UNLESS THE COURT DECIDES TO THE CONTRARY. UNQUOTE.

THE COURT ALSO NOTED THAT THIS PROVISIONAL MEASURE WOULD NOT NECESSARILY HAVE IRREVERSIBLE CONSEQUENCES SINCE SHOULD THE COURT ULTIMATELY ANNUL THE COMMISSION'S DECISION, THE SUBSIDY COULD BE REINSTATED RETROACTIVELY.

10. WHAT THE COURT WILL DO. THE COURT MUST STILL DETERMINE THE QUESTIONS OF LAW AT ISSUE IN THE TWO CASES BETWEEN THE COMMISSION AND UK. COMMISSION SOURCES SAY THAT THE NEXT ORAL HEARING ON THE ISSUE IS SCHEDULED FOR JUNE 15 AND A COURT JUDGEMENT IS EXPECTED
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UNCLASSIFIED

PAGE 02 EC BRU 05394 02 OF 02 261811Z

2 WEEKS TO 1 MONTH AFTERWARDS.

11. WHAT THE UK WILL DO. THE UK HAS ANNOUNCED THAT IT WILL COMPLY WITH THE COURT ORDER BUT MAY TAKE A LONG VIEW ON THE "FORTHWITH", I.E., IT WILL PROBABLY NOT STOP THE SUBSIDY FOR SOME WEEKS. THERE HAVE BEEN PRESS REPORTS THAT THE UK HAS APPLIED TO THE COMMISSION TO TAKE PROTECTIVE MEASURES UNDER ARTICLE 135 OF THE ACCESSION TREATY. AGRICULTURAL MINISTERS AND COMMISSIONER GUNDELACH WERE IN LONDON MAY 24-25 FOR INFORMAL TALKS WHERE THE UK PIG MATTER WAS RAISED. IMMEDIATELY AFTER, AGRICULTURAL EXPERTS STAYED IN LONDON FOR FURTHER TECHNICAL TALKS. APPROPRIATE UK PERMDEL OFFICIALS ARE IN LONDON FOR THESE TALKS AND THUS WE HAVE NOT BEEN ABLE TO REACH THEM OR COMMENT.

12. WHAT THE EC WILL DO. IF THE STORY IS TRUE ABOUT THE ARTICLE 135 APPLICATION, THE COMMISSION MUST DECIDE BY EMERGENCY PROCEDURE THE PROTECTIVE MEASURES IT CONSIDERS NECESSARY, SPECIFYING THE CONDITIONS FOR PUTTING THEM INTO EFFECT. AS A GENERAL MEASURE TO HELP THE EC PORK SECTOR THE COMMISSION, ACTING THROUGH THE MANAGEMENT COMMITTEE, COULD INCREASE THE PRIVATE STORAGE SUBSIDY FOR PORK

(THERE ARE NO INTERVENTION STOCKS FOR PORK). A COMMISSION WORKING-LEVEL OFFICIAL HAS TOLD US THAT THE C MAY WELL DO THIS SHORTLY BUT IT WOULD NOT CONSIDER INCREASING EC SUBSIDIES FOR EXPORTS TO THIRD COUNTRIES. ANY CHANGE IN THE MCA CALCULATION FOR PORK MUST BE BY COUNCIL ACTION AND THE NEXT SCHEDULED AGRICULTURAL MEETING IS JUNE 20-21.

13. COMMENT. IN ITS INTERIM RULING, THE EUROPEAN COURT OF JUSTICE HAS VERY CLEARLY DEFENDED THE INSTITUTIONAL BALANCE INCORPORATED IN THE ROME TREATY AS WELL AS ASSERTED THAT NO MATTER HOW TEDIOUS THE MACHINERY TO DETERMINE THE LEGALITY OF A NATIONAL SUBSIDY IS, IT MUST BE FOLLOWED. THE COURT HAS TAKEN SIMILAR ACTIONS IN THE PAST TO FORBID MEMBER STATES ACTIONS WHILE IT IS CONSIDERING A CASE. MOST OBSERVERS BELIEVE THE COURT WILL ULTIMATELY RULE AGAINST THE UK. HOWEVER, UK PIG PRODUCERS WILL UNDOUBTEDLY GET SOME RELIEF WHETHER THROUGH ARTICLE 135 MEASURES, CHANGED UNCLASSIFIED

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PAGE 03 EC BRU 05394 02 OF 02 261811Z

MCA'S, INCREASED PRIVATE STORAGE SUBSIDIES, OR A COMBINATION OF THESE MEASURES. THERE MAY BE SOME LAG, HOWEVER, BETWEEN WHEN THE SUBSIDY IS ABOLISHED AND WHEN ALTERNATIVE RELIEF IS PUT INTO EFFECT. HINTON

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